IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

1. S.B. Criminal Leave to Appeal No.279/2002
In
S.B. Criminal Appeal No._____/2002

State of Rajasthan through P.P.
Versus
Prakash S/o Bhoorji
and
Hariom S/o Moolsan @ Musal

2. S.B. Criminal Jail Appeal No.1582/2003

Prakash S/o Bhoorji
Versus
State of Rajasthan through P.P.

Date of Judgment :::: 10th of January, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Niranjan Lal Gupta, Amicus Curiae,
for accused-appellant
Shri Arun Sharma, P.P., for the State
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By the Court:-

Heard learned counsel for the parties.

The accused as well as the State, both, have preferred criminal jail appeal and criminal leave to appeal, respectively, against the judgment and order dated 7th of February, 2002, passed by the trial court in Sessions Case No.29/2001, whereby the learned trial

court, while acquitting accused Hariom S/o Moolsan @ Moosal, convicted and sentenced accused-appellant Prakash S/o Bhoorji, as under:-

Name of Accused	***Under Section***	***Sentence***
Prakash S/o Bhoorji	366 IPC	To five years rigorous imprisonment and a fine of Rs.1,000/-, in default of payment of fine, to further undergo one month's simple imprisonment.
	376 IPC	To seven years rigorous imprisonment and a fine of Rs.1,000/-, in default of payment of fine, to further undergo two months' simple imprisonment.
	3 (1)(XII) of the S.C. & S.T. (Prevention of Atrocities) Act	To one year's rigorous imprisonment and a fine of Rs.500/-, in default of payment of fine, to further undergo one month's simple imprisonment
	3 (1)(XI) of the SC & ST (Prevention of Atrocities) Act	To one year's rigorous imprisonment and a fine of Rs.500/-, in default of payment of fine, to further undergo one month's simple imprisonment

All the sentences were ordered to run concurrently.

Briefly stated the facts of the case are that Station Superintendent, Chhoti Udai, submitted a written-report to the Station House Officer, Police

Station, G.R.P., Gangapurcity, (Exhibit P-1), wherein it was alleged that two persons are assaulting one lady. It appears that these persons have brought the lady to commit some offence, therefore, needful may be done in the matter. On the basis of this report, a case No.79/2001 was registered under Sections 366, 376, 34 of the IPC and under Section 3(1)(X),(XI), (XII) and 3(2)(V) of the S.C. & S.T. (Prevention of Atrocities) Act, and investigation commenced. The accused-persons were arrested and after completion of investigation, a challan was filed under Sections 366, 376/34 of the IPC and under Section 3(2)(V) of the S.C. & S.T. (Prevention of Atrocities) Act against accused Prakash and Hariom. A challan was also filed under Section 299 of the Cr.P.C. against other accused Ramcharan @ Ramsingh.

The learned trial court framed the charge against accused Prakash under Sections 366, 376, IPC and under Sections 3(1)(XII), 3(1)(XI) and 3(2)(V) of the S.C. & S.T. (Prevention of Atrocities) Act, and against accused Hariom under Section 366, IPC. Both the accused-persons denied the charge and claimed to be tried.

The prosecution examined PW-1 to PW-14, in support of its case. Thereafter the statement of

accused was recorded under Section 313, Cr.P.C., wherein it was stated that they have falsely been implicated in the case. No evidence was produced in defence.

The learned trial court, after considering the evidence on the record and hearing the arguments of both the sides, acquitted co-accused Hariom from the charge under Section 366, IPC, but so far as accused-appellant Prakash is concerned, he was convicted and sentenced as mentioned above, vide its impugned judgment and order dated 7th of February, 2002.

Being aggrieved with the same, accused-appellant Prakash has filed Criminal Jail Appeal through Superintendent, Central Jail, Bharatpur, and the State of Rajasthan has preferred Criminal Leave to Appeal against both accused Prakash as well as Hariom. The appeal as well as criminal leave to appeal both are directed against common order, therefore, both are being disposed of by this common order.

The learned counsel for the accused-appellant referred the statements of PW-12 Mst. Ramila, the prosecutrix, as well as PW-6 Dr. Mohan Meena, and contended that from the statement of the prosecutrix Mst. Ramila (PW-12) it is not proved that the offence under Section 376, IPC, has been committed by accused Prakash. It is contended that penetration is the sine-qua-non for an offence of rape, whereas there is no evidence in the present case to prove penetration,

therefore, the accused-appellant is liable to be acquitted. He has also referred the medical evidence wherein the age of the prosecutrix has been mentioned as 17 to 19 years, but no positive opinion has been given about committing rape with her. He, therefore, contended that accused Prakash be acquitted. In alternative, he contended that accused-appellant Prakash has already remained in jail for about 5 years 6 months and 16 days and looking to the background of the case, the statement of the prosecutrix and the medical-report, ends of justice will meet in case his sentence of 7 years rigorous imprisonment is reduced to a period of 5 years 6 months and 16 days, already undergone by him.

The learned counsel for the State contended that the learned trial court rightly convicted and sentenced accused Prakash in view of the overwhelming evidence of the prosecution available on the record. So far as accused Hariom is concerned, he contended that the learned trial court has committed an illegality in acquitting him from the charge under Section 366, IPC. He, therefore, contended that leave to appeal may be granted and a notice be issued to Hariom.

The leave to appeal was filed way-back on 8th of

May, 2002, but no notice was issued to accused-persons of the criminal leave to appeal and the same was tagged with the criminal jail appeal filed by accused Prakash, and the same has now come-up before this court for hearing along with the appeal of accused Prakash.

I have heard the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

Exhibit-P-1 is the written-report given by the Station Master of the Railway Station to the S.H.O., G.R.P., Gangapurcity, wherein it was alleged that two persons are trying to abduct one lady and, on that report a case was registered. Thereafter investigation was made in the case. The prosecutrix was examined medically. As per the opinion of the Medical Board, she was not habitual to sexual intercourse. Pv. Examination suggestive of intercourse within 3 days. Final opinion will be given after FSL report.

PW-12 Mst. Ramila, in her statement, has named accused Prakash and stated that he committed rape with her, but she has not alleged any allegation about rape against Hariom. It was stated that accused Prakash took her at the residence of Hariom and there also Prakash committed rape with her.

PW-6 Dr. Mohan Meena has proved the medical-report so also the age certificate of prosecutrix Mst. Ramila, (Exhibit P-8), wherein her age was prescribed as 17 to 19 years. PW-12 Mst. Ramila herself disclosed her age as 25 years before the trial court on 24th of January, 2002, when her statement was recorded.

After considering the statement of Mst. Ramila (PW-12) and the statement of Dr. Mohan Meena (PW-6), I am of the firm opinion that the learned trial court was right in convicting and sentencing accused-appellant Prakash for the above offence. The learned trial court has discussed the prosecution evidence in detail and recorded a finding about commission of offence by accused Prakash. The learned trial court has rightly acquitted Hariom in absence of specific evidence against him. The learned trial court has observed that even prosecutrix has not named specifically about Hariom. In these circumstances, I do not find any merit in the submission of the learned counsel for the appellant to interfere in the finding of the learned trial court in respect of conviction of accused Prakash and also I do not find any merit in the contention of the learned Public Prosecutor in support of his Criminal Leave to Appeal against acquittal of accused Hariom, so as to interfere in the

finding of the learned trial court in this regard.

Consequently, I do not find any merit in the order of conviction passed by the trial court against accused Prakash and its order of acquittal in respect of accused Hariom.

So far as sentence of imprisonment part is concerned, the learned counsel for the appellant contended that the background of the case clearly shows that there was no specific allegation of rape in the written-report (Exhibit-P-1). He further contended that at the time of incident the prosecutrix was 25 years of age, as stated by her in the statement before the trial court itself. The accused has already remained in jail for about 5 years 6 months and 16 days. He has also pointed out number of contradictions in the statements of the prosecutrix and other prosecution witnesses, which are not fatal to the prosecution case but they are relevant for considering the case of accused for reduction of sentence.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition

before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

Under sub-section (1) of Section 376, IPC, the minimum sentence of seven years is prescribed. But, the same is subject to proviso that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

After considering the facts and circumstances of the present case, I am not inclined to reduce the sentence of 7 years rigorous imprisonment to a period of five-and-half-year imprisonment, already undergone by the accused, as contended by learned counsel for the appellant, but, in view of the fact that there are certain contradictions in the statement of the prosecutrix, which are not fatal to the prosecution case, however, those are certainly relevant for the purpose of reduction of sentence of imprisonment, and keeping in view the fact that the accused-appellant has already remained in jail for about five-and-half-year, I reduce the sentence of 7 years rigorous imprisonment to a period of 6 years rigorous

imprisonment with a fine of Rs.1,000/- under Section 376, IPC.

Consequently, the Criminal Leave to Appeal preferred by the State of Rajasthan is dismissed. The appeal of accused-appellant Prakash is partly allowed. His conviction under Section 376, IPC, and conviction and sentence under Sections 366, IPC, and under Sections 3(1)(XII) and 3(1)(XI) of the S.C. & S.T. (Prevention of Atrocities) Act, is maintained. But, his sentence of imprisonment under Section 376, IPC, is reduced from 7 years rigorous imprisonment to a period of 6 years rigorous imprisonment, with a fine of Rs.1,000/- (Rupees one thousand); in default of payment of fine, to further undergo two months simple imprisonment.

(Narendra Kumar Jain) J.

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